

BOARD OF APPEALS CASE NO. 5097

BEFORE THE

APPLICANT: Vanguard Commercial Development Inc.

ZONING HEARING EXAMINER

REQUEST: Special Exception to construct and use accessory parking, driveway and private road in the R2 District; west side of Abingdon Road, Abingdon

OF HARFORD COUNTY

Hearing Advertised

Aegis: 11/8/00 & 11/15/00

HEARING DATE: December 18, 2000

Record: 11/10/00 & 11/17/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Vanguard Commercial Development, Inc. is seeking a Special Exception, pursuant to Section 267-53K of the Harford County Code, to construct and use an accessory parking area, driveway and private road in the R2 District to serve a use permitted and located in another district and not permitted in the R2/Urban Residential District.

The subject property is located at the Eastside of Emmorton Road, MD Route 924 with road frontage on the southwest side of Abingdon Road. The property is behind and adjoining the Boyle Buick property and is more particularly identified on Tax Map 61, Grid 1 F, Parcel 424, consists of 11.29 acres, is zoned R2/Urban Residential and is entirely within the First Election District.

Mr. Frank Hertsch appeared on behalf of the Applicant and explained that the subject property is intended to be used as additional parking area for the adjoining proposed Giant grocery store. In addition to parking spaces, the addition of this area allows the entrance to be widened and straightened allowing safer turning of large delivery trucks. The Applicant is the contract purchaser of both properties so common ownership will result. With the exception of additional parking spaces, no other uses are proposed for the area subject to this special exception request. In the opinion of the witness, no adverse impacts will result from the use of this parking area since it will be a parking area under any circumstances. No additional traffic will be generated and there will be the opportunity to improve landscaping as a result of additional acreage.

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Mr. William Monk appeared and qualified as an expert land planner. Mr. Monk testified that the proposed use was consistent with good planning practices and was compatible with other R2 uses. The witness pointed out that there are a number of R2 uses that are permitted and require a parking area. Mr. Monk pointed out an area of 50 foot buffer that will be landscaped providing screening if this request is approved. He pointed out that such a buffer is unavailable on the existing property and will not exist without the approval requested herein. The witness opined that this use proposed at this location would have no greater impact than a similar use anywhere else within the zone.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning and testified that the request herein was not a request to approve a Giant store at this location but was simply a request to allow a parking area in one zone to be used as accessory to a different use located in another zone. The Department of Planning and Zoning recommends approval of the request finding that all of the requirements of the Harford County Code have been met. Upon cross examination, the witness stated that there was nothing so unique or different about this request or its location or proposed use that would, in his opinion, justify a denial of the special exception. He reiterated that it is common for R2 uses to be surrounded by other non-R2 uses in Harford County.

Mr. Vernon Patten appeared in opposition to the request. Mr. Patten resides at 3029 Abingdon Road and adjoins the subject parcel. He is concerned that there is no traffic control device at the intersection of the property driveway and Abingdon Road and fears excessive traffic, particularly of large trucks using this entrance. The witness also expressed some fear that pedestrians would have a greater ability to cross neighboring properties if this use were granted.

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CONCLUSION:

The Harford County Code, Section 267-53K provides as follows:

“Accessory parking areas, driveways and private roads. These uses may be granted in any district to serve a use permitted and located in another district but not permitted in the subject district, provided that:

- (1) The parking area, driveway or private road shall be accessory to and for the use of one (1) or more agricultural, residential, business or industrial uses located in an adjoining or nearby district.
- (2) No charge shall be made for the parking or storage of vehicles on any parking lot approved pursuant to this provision.
- (3) Any private road or driveway shall provide access to an approved private road, county road or state road or highway.
- (4) The number of parking spaces and total parking area approved in the subject district under this section shall not exceed thirty percent (30%) of the parking spaces and area required by this Part 1 for the permitted use.”

Based on all of the facts presented to the Hearing Examiner, it is clear that the Applicant has met all of the requirements of the Harford County Code as set forth in Section 267-53K. The Maryland Court of Appeals has provided further guidance in determining the appropriate standard for review of the grant or denial of a special exception use in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981). This decision stated the applicable standards for judicial review of the grant or denial of a special exception use as follows:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

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Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted.) These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (emphasis in original) 291 Md. at 11-12, 432 A.2d at 1325.

The Court of Appeals established the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. at 15, 432 A.2d at 1327.

See also Deen v. Baltimore Gas & Elec. Co., 240 Md. 317, 214 A.2d 146 (1965).

The Hearing Examiner concludes that this proposed use at this location will have no greater adverse impact at this location above and beyond those inherent with such a special exception use regardless of its location.

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Based on a thorough review of the facts presented and the law applicable to those facts, the Hearing Examiner recommends approval of the request subject to the following conditions:

1. The Applicant shall obtain all necessary permits and inspections.
2. The Applicant shall submit a revised site plan for review and approval.
3. The Applicant shall submit a landscaping plan for review and approval which shall include, at a minimum, sufficient landscaping within the described 50 foot buffer area to minimize visual impact of this use from neighboring uses.

Date JANUARY 17, 2001

William F. Casey
Zoning Hearing Examiner